SINGLE BENCH

(4)

(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P (S). NO...636...../2007

PETITIONER

Santu Ram Markam,
Aged about 25 years,
S/o Budh Nath Markam,
At present working as Secretary,
Gram Panchayat, Palli,
R/o Village – Palli,
Block Development, Kondagaon,
District : Bastar, (CG).

P.R. No. 698/07
Presented by Shri Hr. P. Krishna
dated 23/11/07

VERSUS

RESPONDENTS

1. Sarpanch, Gram Panchayat, Palli, Block Development, Kondagaon, District : Bastar, (CG).

2. Chief Executive Officer, Janpat Panchayat, Block Development, Kondagaon, District : Bastar, (CG).

3. Tansuk Ram Netam, S/o Janglu Ram Netam, R/o Village – Palli, Tahsil – Kondagaon, District – Bastar, (CG).

4. Sub Divisional Officer, (Revenue), Kondagaon, District – Baster, C.G.

5. Additional Collector, Narayanpur, District – Baster, C.G.

RECEIVED-COPY
23/11/07
CLERK to A. G. BILASPUR

21/11/07

(8)

(2)

PETITION UNDER ARTICLE 226 ~~227~~ OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS OF MANDAMUS AND CERTIORARY AND FOR OTHER SUITABLE WRITS AND DIRECTIONS

AFR

(78)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 636 of 2007

Petitioner — Santu Ram Markam

Versus

Respondents — Sarpanch, Gram Panchayat and others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Present: Mr. Vishnu Koshta, Advocate for the petitioner.
None appears for the respondents No. 1 to 3.
Mr. Arvind Dubey, Panel Lawyer for the respondents No. 4 & 5.

ORDER

(Passed on 2nd Day of February, 2007)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. By this petition, the petitioner has impugned the order dated 2.5.2005 (Annexure P-4) passed by the Sub-Divisional Officer (Revenue), Kondagaon, District-Bastar and order dated 22.12.2006 (Annexure P-7) passed by the Additional Collector, Narayanpur, District-Bastar.

2. The facts, in nutshell, are that the respondent No. 3 was removed by the general body of the Gram Panchayat in its meeting held on 14.7.2004, from the post of Panchayat Secretary. The order of removal of respondent No. 3 was passed by Gram Panchayat, which was approved by Gram Sabha in its meeting held on 20.7.2004 (Annexure P-1). In his place, the petitioner was appointed as

Secretary of Gram Panchayat, Palli by Gram Panchayat, which was approved by the Gram Sabha in its meeting, held on 7.9.2004 (Annexure P-2).

3. Being aggrieved, the respondent No. 3 filed an appeal before the Sub-Divisional Officer (Revenue), Kondagaon, District-Bastar under Rule 3 of the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 (in short "Rules, 1995"). The Sub-Divisional Officer (Revenue), Kondagaon, District-Bastar, after having heard and considering all the aspects of the matter came to the conclusion that the meeting of the Gram Sabha held on 20.7.2004 was not in accordance with the provisions of laws, as such the order of removal of respondent No. 3 from the post of Secretary was un-constitutional and nullity. Thus, the appeal was allowed vide order dated 2.5.2005 (Annexure P-4) directing reinstatement of the respondent No. 3 on the post of Secretary, Gram Panchayat, Palli, Tahsil-Kondagaon, District-Bastar.

4. The petitioner, being aggrieved by the decision of the Sub-Divisional Officer (Revenue), Kondagaon, District-Bastar preferred an appeal before the Additional Collector, Narayanpur, District-Bastar under Section 3(a) of the Rules, 1995. The petitioner had further filed an application in the appeal before the Additional Collector, Narayanpur, District-Bastar seeking stay of the order dated 1.8.2005 passed by the Chief Executive Officer, Janpad Panchayat,

Kondagaon, District-Bastar, pursuant to order dated 2.5.2005 passed by Sub Divisional Officer (Revenue), Kondagaon, District-Bastar. The same was stayed during pendency of the appeal vide order dated 28.9.2005 (Annexure P-6). The said interim order dated 28.9.2005 was vacated on 22.12.2006 (Annexure P-7), which is impugned in the in the present petition. It was stated that the removal of the respondent No. 3 was not in accordance with law, the principles of natural justice was not followed. Thus, the respondent No. 3 became entitled to be reinstated on the post of Panchayat Secretary.

5. The petitioner filed this petition impugning the order dated 2.5.2005 (Annexure P/4) and order dated 22.12.2006 (Annexure P/7). The sole contention of the petitioner is that once Gram Panchayat and Gram Sabha have approved the appointment of the petitioner on the post of Panchayat Secretary, the order becomes final and there is no provision for appeal or revision. Learned counsel relied on circular dated 26.11.2002 (Annexure P/3) wherein, it is provided that there is no provision for appeal or revision against the decision of Gram Panchayat which stands approved by Gram Sabha. The circular itself is contrary to the provisions of the Rules, 1995, wherein it is clearly provided under Rule 3 that an appeal or revision is maintainable against the decision of Gram Panchayat. Even otherwise removal of Panchayat Karmis are governed by Rule 7 of the Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short "

(61)

Rules, 1999"), which is based on basic principles of natural justice. The same cannot be taken away by any circular. The Rule 7 of the Rules, 1999 provides for basic right of an employee who is terminated from his service without following due process of law and principles of natural justice. The appointment of the petitioner was made when dispute with regard to removal of the respondent No. 3 was pending adjudication before Superior Authorities. It is well settled that any decision of appointment taken during adjudication is subject to final decision of the Authority/Tribunal.

6. The appeal filed by the petitioner is still pending consideration before the Additional Collector. The petitioner has impugned the interim order passed by the Additional Collector. At this stage, it does not warrant any interference. No exception can be taken to the order passed by the Additional Collector, Narayanpur, District-Bastar.

7. Thus, the writ petition is dismissed summarily. No order as to cost.

Sd/-
Satish K. Agnihotri
Judge

Subhash